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CLERK US DISTRICT COURT DISTRICT OF NEVADA

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UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

ORDER

ROBERT LEE WATKINS,

Petitioner,

VS.

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12 | JAMES BENEDITTI, et al.,

Respondents.

3:10-cv-00101-RCJ-VPC

This habeas matter under 28 U.S.C. § 2254 comes before the Court on a *sua sponte* inquiry as to whether, *inter alia*, the petition is a successive petition. This order follows upon the Court's earlier show cause order (#5) and an opportunity for a response.

Background

According to the papers submitted and available court records, petitioner Robert Lee Watkins was convicted in 1995 in Nevada state court, pursuant to a jury verdict, of four counts of sexual assault of a minor under fourteen years of age. The Supreme Court of Nevada affirmed the conviction on direct appeal on March 27, 1997. See,e.g., Watkins v. State, 113 Nev. 1658, 970 P.2d 1139 (1997)(table). Petitioner thereafter, in or around November 1997, mailed a federal habeas petition to this Court for filing in No. 3:97-cv-00638-ECR-RAM. The Court denied the petition on the merits on April 8, 1999. According to the online docket records of the Court of Appeals, the Ninth Circuit denied a certificate of appealability over a decade ago, on October 26, 1999.

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Watkins mailed the present petition for filing on or about February 12, 2010.

Governing Law

Under 28 U.S.C. § 2244(b)(1) & (2), a claim in a "second or successive petition under section 2254" must be dismissed if it was presented in a prior petition; and, if the claim was not presented in the prior petition, it may be considered only in the circumstances delineated in § 2244(b)(2). Under 28 U.S.C. § 2244(b)(3)(A), before a second or successive petition is filed in the district court, the applicant must move in the Court of Appeals for an order authorizing the district court to consider the petition. If an earlier federal petition is dismissed on the merits, any subsequent petition challenging the same judgment of conviction or sentence will constitute a second or successive petition. See,e.g., Henderson v. Lampert, 396 F.3d 1049, 1052-53 (9th Cir. 2005).

Discussion

Petitioner did not file a response as such to the show cause order. Instead, he stated in an unsworn cover letter submitted with an amended petition that he no longer has documents from his prior writ history. Petitioner has failed to establish that the present petition is not a successive petition. The papers that he has in his possession and that he does submit with his amended petition provide additional confirmation that he filed a prior federal petition in No. 3:97-cv-00638-ECR-RAM that was denied on the merits. See #7, at electronic docketing pages 29-36. Nothing in the amended petition otherwise leads to a conclusion that the petition, both as filed originally and as amended, is not a successive petition. As per the show cause order, the matter therefore will be transferred to the Court of Appeals as a successive petition.

In the show cause order, the Court expressly ordered:

IT FURTHER IS ORDERED that petitioner shall not file any further juvenile or medical records of the victim in this matter without an accompanying separate motion seeking to have the papers filed under seal.

#5, at 4, lines 7-9.

Despite this clear directive, petitioner once again filed copies of the victim's juvenile or medical records without an accompanying separate motion seeking to have the papers filed under seal. If petitioner again violates the Court's order and again files copies of the victim's juvenile or medical records without an accompanying separate motion seeking to have the papers filed under seal, the Court will impose sanctions, without regard to whether the Court otherwise has jurisdiction over or is proceeding forward in the underlying action.

IT THEREFORE IS ORDERED that this action hereby is TRANSFERRED to the United States Court of Appeals for the Ninth Circuit for consideration under 28 U.S.C. § 2244(b)(3)(A).

IT FURTHER IS ORDERED that the Clerk shall file electronic docketing pages 40, 50-58 and 62-76 of #7 under seal.

IT FURTHER IS ORDERED that the Clerk of the Court shall transmit the entire case file to the Court of Appeals simultaneous with this transfer order substantially in the same manner as an appeal, pursuant to the current practice of the Clerk with regard to the electronic record.

The transfer pursuant to this order closes this matter in the District Court.

DATED: This 24th day of August, 2010.

United States/District Judge